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Ecuador's Illogical New Exercise in Direct Democracy

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Category/Department: Ecuador
Published: Friday, February 4, 2011

Ecuadoran President Rafael Correa has proposed a new referendum, which incorporates questions that mix constitutional reforms with other much-less-important issues and whose sole objective seems to be to bolster his popularity.

When Correa took office, the Ecuadoran government had to resort to frequent popular consultations to overcome obstacles imposed by the traditional political parties, which controlled the Congress, to the process of reforms that he wanted to implement. "The people decide, and I will abide by their verdict as often as necessary," the president said frequently.

Correa used the referendum to open the way for convoking the 2007 constituent assembly and later to approve the 2008 Constitution, a document considered progressive with strong guarantees for human rights and the rights of nature.

Rightist sectors took advantage of the slowness of the Asamblea Nacional (AN), which has been unable to design a legal framework in accordance with the new Constitution, and particularly the dysfunction of the new constitutional institutions, such as the Consejo de Participación Ciudadana y Control Social (CPCCS), charged with appointing new control authorities and restructuring the courts so that laws can be effectively enforced. The opposition used the inaction to foment in society a feeling of vulnerability regarding political power, led by Correa, and insecurity regarding crime, arguing that the new Constitution has too many human rights guarantees and that this especially favors criminals.

"Increasing penalties and eliminating alternatives to prison sentences, along with opposition to abortion and gay marriage, have been the issues that historically have kept the most conservative political sectors alive," said Rodrigo Varela, legal advisor for the Fundación Regional de Asesoría en Derechos Humanos (INREDH).

The political opposition, made up principally of rightist sectors that have been neutralized through consecutive electoral processes that gave victories to the government, began to take hold through criticism of the constitutional guarantees, which it identified as the cause of increased crime in the country. "Correa's Constitution has brought us more insecurity and increased crime," said Cinthya Viteri, head of the rightist movement Madera de Guerrero.

In the face of a drop in popularity, Correa had no choice but to join in questioning the 2008 Constitution, accepting that it contained mistakes and needed to be amended through a popular consultation. "Correa built on the opposition's discourse and once more neutralized it, since now the vote will be for 'yes to Correa,'" said Varela.

A consultation that induces a yes vote

The consultation proposed by Correa consists of 10 questions, five of which would modify the progressive characteristics of the constitutional guarantees, even though, in the bylaws for convoking the Asamblea Constituyente in 2007, the government agreed that the new Constitution would respect and deepen the social and progressive human rights content.
The consultation, in asking about judicial reform—having new magistrates named directly by government delegates—or eliminating the rights of persons who have been detained, is endangering principles already enshrined in the Constitution, says Susy Garbay, a lawyer with the Defensoría del Pueblo. "While the Constitution establishes various mechanisms for participation and direct democracy, these cannot be exercised outside the principles of already recognized constitutional rights nor can they compromise the autonomy of the various state powers," said Garbay.

To avoid criticism and ensure an affirmative vote, the structure of the first five questions is unusual, since they begin by enunciating societal desires: "For the purpose of improving citizen security" (question 1); "For the purpose of avoiding impunity and guaranteeing that those indicted appear at trial" (question 2); "For the purpose of avoiding conflicts of interest" (question 3); "For the purpose of overcoming the crisis of the judicial branch" (question 4); and "For the purpose of having more efficient administration in the judicial system" (questions 5).

The orientation toward a yes vote, says Deputy César Montúfar, is proof that the government is not attempting to carry out a consultation regarding important issues for the country but rather looking to consolidate its popularity with a new electoral triumph: Who is not going to vote yes on anything, if a question begins by saying that it is "for the purpose of improving citizen security," asked Montúfar.

**Distractions and topics to hide the concentration of power**

Questions 4 and 5 are aimed at restructuring the judicial system and the Consejo de la Judicatura, which has judicial oversight. This restructuring would be carried out by a three-person commission named by the executive, the Asamblea Nacional, and the Función de Transparencia y Control Social—three entities led by Alianza País, that is, in the hands of President Correa.

In a consultation specifically on the Función Judicial, these two questions probably would be answered with a resounding no. But following these questions are five additional questions "regarding matters of citizen interest."

One has to do with banning public spectacles where animals are killed for entertainment, specifically bullfighting, which is very unpopular in the country. In a CEDATOS poll, 84% of respondents consider it barbaric.

Similarly, other questions deal with eliminating casinos and games of chance with betting, prohibiting illicit enrichment, criminalizing refusal to participate in social security, and creating a communications council to regulate the communications media.

In the debate on the last five questions, the one regarding bullfighting has captured the most interest, with demonstrations for and against, and has pushed interest in the other questions to the background.

"We are going to vote yes on banning bullfighting, and we are also going to vote yes on controlling the communications media," said Deputy Montúfar.

**Administration’s popularity is at stake**

Both the government and the opposition seem to have accepted that the consultation is a simple popularity poll and it is toward that end that the political interventions are aimed.
The president was emphatic in asking for confidence. "Have faith in your president, trust your
president," Correa said in presenting the text of this consultation.

The opposition also began its campaign calling for a no vote, forgetting that several questions were
derived from its own political discourse, such as the one regarding harsher treatment of criminals.

To complete the panorama, Poder Electoral president Omar Simons announced that in this new
electoral process advertising for either a yes or no vote is banned, thus removing the possibility of a
public debate, which would otherwise be almost impossible given the complexity of the questions
and the diversity of political and legal aspects involved.

Thus everything comes down to a vote for or against the government. Grassroots and
nongovernmental organizations (NGOs) have also understood it in that way, and the Confederación
de Nacionalidades Indígenas del Ecuador (CONAIE) announced its opposition to the consultation
to oppose the government, while the Confederación Nacional Campesina (CNC) announced its
support of the government, backing a yes vote on the consultation.

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